

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

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:: ORDER ::

(1) Amra Ram Vs. Mohan Ram & Ors.

S.B. CIVIL WRIT PETITION NO.875/2006.

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(2) Amra Ram Vs. Addl.C.J.(SD) & Ors.

S.B. CIVIL WRIT PETITION NO.1307/2006.

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Date of Order :: 19th May 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. I.R. Choudhary }
Mr. V.S. Choudhary }, for the petitioner.
Mr. Pradeep Choudhary, for Caveator.

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BY THE COURT:

These two writ petitions directed against the order dated 03.02.2006 passed by the Additional Civil Judge (Senior Division) No.2, Jodhpur in Election Petition No. 17A/2005 involving common questions of law and facts were heard together and are taken up for disposal by this common order.

Briefly put, the relevant facts are that the petitioner Amra Ram is facing an election petition filed by the respondent Mohan Ram questioning his election as Sarpanch, Gram Panchayat, Nanani in the elections held on 4th February 2005. The election petitioner has put to challenge the election of the petitioner as Sarpanch on various grounds including improper reception and rejection of votes and various illegalities committed in the counting of votes in connivance with the non-applicant No.1 (present petitioner); and has arrayed the Returning Officer and the Election Officer as parties to the election petition as non-applicant Nos. 2 and 3 respectively. The election petitioner has levelled allegations, inter alia, with the following averments: -

“8. यह है कि मतगणना के दौरान प्रार्थी के पक्ष में गिने गये 1744 (एक हजार सात सौ चम्मालीस) वैध मत पत्रों में से रिटर्निंग अधिकारी अप्रार्थी सं. 2 (दो) ने अप्रार्थी सं. 1 (एक) से मिलावट कर प्रार्थी के 107 (एक सौ सात) वैध मत पत्रों को गायब कर दिया। जिससे प्रार्थी का चुनाव परिणाम सारवान रूप से प्रभावित हुआ व प्रार्थी की जीत बताकर उसे गलत रूप से हराया गया।

9. यह है कि मतगणना के दौरान रिटर्निंग अधिकारी अप्रार्थी सं. 2 (दो) ने मतगणना में भारी अनियमितताएँ की व अप्रार्थी सं. 1 (एक) से मिलावट कर प्रार्थी की जीत बताकर उसको प्राप्त 1744 (एक हजार सात सौ चम्मालीस) वैध मतों में से 107 (एक सौ सात) मत पत्र गायब कर व 50 (पचास) मत पत्र प्रार्थी के वैध मत पत्रों से निकाल कर अप्रार्थी सं. 1 (एक) के मत पत्रों में डाल कर तथा प्रार्थी के पक्ष के तरह वैध मत पत्रों को

गलत रूप से खारिज कर उसकी 36 वैध मतों से प्राप्त विजय को अप्रार्थी सं. 2 (दो) ने जान बूझकर गलत रूप से अप्रार्थी सं. 1 (एक) से मिलावट कर हार में बदला व अप्रार्थी सं. 1(एक) को गलत रूप से ग्राम पंचायत नानण का सरपंच घोषित किया । यदि अप्रार्थी सं. 2 (दो) यह गलत मतगणना नहीं करता तो प्रार्थी निश्चित रूप से ग्राम पंचायत नानण के सरपंच पद पर 36 (छत्तीस) वैध मतों से विजयी होता ।

10. यह है कि मतगणना अधिकारी ने अप्रार्थी सं. 1 (एक) से मिली भगत कर अप्रार्थी को गलत रूप से विजयी घोषित किया जबकि अप्रार्थी से प्रार्थी के वैध मत पत्र अधिक थे ।"

In the said election petition, the present petitioner moved two applications on 4th August 2005 and 27th October 2005. In the application dated 4th August 2005 (Annex.2 to writ petition No.875/2006), with reference to Rule 83 of the Rajasthan Panchayati Raj (Election) Rules, 1994 (hereinafter referred to as 'the Rules'/'the Rules of 1994') read with Section 109 of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act'/'the Act of 1994') and Order 7 Rule 11 of the Code of Civil Procedure (CPC), it was submitted that the District Election Officer has been impleaded as non-applicant No.3 in the election petition but such impleadment is impermissible because Rule 83 of the Rules specifically provides for persons to be impleaded parties to the election petition and unless the non-applicant No.3 is deleted being an unnecessary party, the election petition could not be

proceeded with. It was also submitted in the alternative that if non-applicant No.3 is retained as party, then the petition is liable to be rejected because it cannot be maintained against the said non-applicant No.3 without serving a notice as required by Section 109 of the Act of 1994. It was, therefore, prayed that the non-applicant No.3 be deleted and an amended petition be filed and, if not done so, the petition be rejected. A reply to the application was filed by the election petitioner with the submissions that the District Election Officer has got the election conducted and has declared the results and for the irregularities in the election and in the counting of votes, the District Election Officer is directly responsible. It was submitted that the said Election Officer performed his duties under the directions of the Election Commission and, therefore, the provisions of Section 109 of the Act of 1994 are not applicable in relation to the subject matter of the election petition nor his name is liable to be deleted from the array of parties.

In the other application submitted by the petitioner on 27th October 2005 with reference to the same provisions of Rule 83 of the Rules of 1994 read with Section 109 of the Act of 1994 and Order 7 Rule 11 CPC, it was submitted in relation to the non-applicant No.2, i.e. the Returning Officer, that he was also not answering to the description of a necessary party

under the Rules of 1994 and he cannot be impleaded as party in the election petition and without deleting his name, the election petition cannot be proceeded with. It was also submitted that if the said Returning Officer is retained as party in this election petition, the petition is liable to be rejected because he has not been served with a notice under Section 109 of the Act of 1994. Similar prayer was made in this application also that the name of non-applicant No.2 be deleted and, if not so done, the petition be rejected.

The learned Additional Civil Judge (Senior Division) No.2, Jodhpur hearing the election petition has considered and rejected both the applications aforesaid by the impugned order dated 3rd February 2006 (Annex.4 in writ petition 875/2006 & Annex. 3 in writ petition No.1307/2006). The learned trial Judge, after considering the record of the case and the scheme of the Rules, was of opinion that the District Election Officer and Returning Officer are directly connected with every election and are necessary parties directly affected by every result; and if they are not impleaded as parties at present and are served with notice at a later stage after the success of election petition, that would result in elongating and complicating the trial and, therefore, their names are not required to be deleted. On the question of serving of a notice under Section 109 of the Act, the learned

trial Judge was of opinion that such notice is not required to be served because the election petition is required to be submitted within thirty days of the result; and the subject matter of the election petition relates to the procedure of election and such officers and their acts do not answer to the requirements of Section 109 of the Act of 1994 and prior notice is not required to be given in a litigation filed against their actions in conducting the elections because they work under the instructions of Election Commission and the election petition could not be treated as civil suit or civil proceedings.

Assailing the orders aforesaid, learned counsel Mr. V.S. Choudhary appearing for the petitioner has vehemently contended particularly with reference to Rules 83 and 87 (1) (d) of the Rules of 1994 that the Rules specifically provide for the persons to be impleaded as parties to the election petition; and so far the charge of corrupt practice is concerned, only after a finding is reached on the question of corrupt practices and a person is considered guilty after the trial of the election petition that he is required to be served with a notice and then final orders are required to be passed and, therefore, the impleadment of the Returning Officer and the District Election Officer at the initial stage of the proceedings is neither proper nor permitted and the election petition is liable to be rejected on account of misjoinder of

parties. Learned counsel has contended with reference to the decisions in Smt. Manju Sharma Vs. Suji Sharma & Anr. : 1996 (3) WLC 161 and Kripal Singh Vs. Darshan Singh & Ors. : 1986 WLN (UC) 202 that the provisions of Representation of the People Act, 1951 and the principles therein directly apply to the election petitions under the Rules and the Act of 1994.

Learned counsel re-enforced his submissions that the persons against whom the charge of corrupt practices are levelled in the petition are required to be given notice only when such charges of corrupt practices are found proved and not before; and such proceedings are quasi-criminal in nature as held in Manohar Joshi Vs. Damodar Tatyaba Alias Dadasaheb Rupawat & Ors. : JT 1991 (1) SC 588. Strongly relying upon the decisions in Jyoti Basu Vs. Debi Ghosal : AIR 1982 SC 983, B. Sundra Rami Reddy Vs. Election Commission of India & Ors. : 1991 Supp. (2) SCC 624, Panna Lal Shanti Swaroop Vs. Chief Election Commissioner & Ors. : AIR 1996 Bombay 131, Amjad Ali Vs. B.C. Barua & Ors.: AIR 1958 Assam 17, Shri Lal Janva Vs. Udai Ram Dhakad : 1981 RLW 10 and Ram Shanker Chaudhary Vs. Rama Shanker Singh & Ors. : 1978 JLJ 401, learned counsel strenuously contended that such persons cannot be impleaded as parties; and relying upon the decision in B.S. Yadiyurappa Vs. Mahalingappa & Ors. : AIR 2001 Karnataka 161 submitted

that joining such persons as parties is fatal to the election petition.

Refuting the submissions aforesaid, learned counsel Mr. Pradeep Choudhary appearing in caveat for the election petitioner while relying on the decision in *Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore*: AIR 1964 SC 1545 and *H.R. Gokhale Vs. Bharucha Noshir C. & Ors.*: AIR 1969 Bombay 177 submitted that no illegality has been committed by the learned trial court and even if for the sake of arguments it be assumed that the Returning Officer and the District Election are not necessary parties, in view of the averments made and charges levelled, they are proper parties for determination of the questions involved in the case and it cannot be said that the election petition suffers from misjoinder of parties nor their names are required to be struck off.

Having heard learned counsel for the parties and having perused the material placed on record, this Court is of opinion that these writ petitions remain bereft of substance and deserve to be dismissed.

Rule 83 of the Rules of 1994 dealing with the parties to the petition provides thus, -

“Rule 83. Parties to the petition.- The person whose election is challenged, and where the petition claims that any other candidate shall be declared as elected in

place of such person, every unsuccessful candidate who has polled more vote than such candidate, shall be made respondent to the petition.”

Rule 87 of the Rules of 1994 dealing with the orders that may be passed by the court reads thus, -

“Rule 87. Order of the Court.- (1) Upon the conclusion of the hearing the Judge shall make an order:-

- (a) dismissing the petition, or
- (b) declaring the election of all or any of the returned candidates to be void, or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.
- (d) where any charge is made in the petition of any corrupt practice having been committed at the election, record-
 - (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and
 - (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice;

Provided that a person who is not a party to the petition shall not be named in the order under Sub-clause (ii) of Clause (d) above, unless-

(i) he has been given notice to appear before the Court and to show cause why he should not be so named; and

(ii) if he appears in pursuance of the notice, he has been given an opportunity of cross examining any witness who has already been examined by the Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) The Judge after pronouncing the order made under Sub-rule (1), shall send a copy thereof to the District Election Officer (Panchayat) for taking further necessary action in pursuance thereof.

A bare perusal of the Rules aforesaid makes it clear that Rule 83 deals with the requirement of necessary parties to be impleaded in an election petition; and in such an election petition the person whose election is challenged is required to be joined as party; and where the petition claims that any other candidate may be declared as elected in place of the returned candidate, every unsuccessful candidate who has polled more vote than such candidate, is also required to be made respondent to the petition. The Rule aforesaid or any other Rule in Chapter XIII of the Rules of 1994 does not indicate that joining of any other person is fatal to the competence and maintainability of the petition or that the petition cannot be proceeded with if any other person has been impleaded as a party to such election petition.

Learned counsel for the petitioner has made elaborate submissions with reference to the decisions aforesaid that such authorities like Returning Officer and Election Officer cannot be impleaded as parties to the election petition. What has been argued is that Rule 83 provides for the persons who could be joined as parties and it has been sought to be deduced that the non-applicant Nos. 2 and 3 are unnecessary parties and as they have been impleaded, the election petition is required to be rejected. The submission is not well founded. The submissions by the learned counsel for the petitioner for rejection of the election petition for joinder of unnecessary parties is akin to the argument that in Rule 83 be read the non-existent words or phrase that 'no other person could be joined'. Similar argument was raised before the Hon'ble Supreme Court in Murarka Radhey Shyam's case (supra) and was rejected thus,-

"Learned counsel for the appellant wishes us to read S. 82 as though it said that the persons named therein and no others shall be joined as respondents to the petition. He wants us to add the words "and no others" in the section. We find no warrant for such a reading of S. 82."

Even if it be assumed that the non-applicant Nos. 2 & 3 are neither necessary parties nor proper parties, the core question remains that if they have been joined as parties in view of the allegations levelled, their joinder would be fatal to

the election petition? In the opinion of this Court, the scheme of the Act and Rules does not suggest a course to be adopted where a party allegedly not a necessary party has been joined in the election petition, in that event the petition is required to be rejected. The cases relied upon by the learned counsel for the petitioner essentially dealing with the question that persons other than the candidates are not required to be made parties, do not lead to the ratio that their joinder itself is fatal to the competence and maintainability of the election petition.

In the case of Amzad Ali (*supra*), the question was as to when the notice was required to be issued to the persons against whom allegation of corrupt practice was made and the Hon'ble Assam High Court held that the Tribunal may after conclusion of trial, if necessary, issue notice to such person. The petitioner Amzad Ali had challenged inclusion of himself in the election petition at the initial stage being premature. In the case of Jyoti Basu (*supra*) again, the appellants, though not the candidates, were impleaded in the election petition on the allegation of corrupt practice and the Hon'ble Supreme Court found such inclusion to be improper and their names were ordered to be struck out from the array of parties. Similarly, in the case of Pannalal (*supra*), the Hon'ble Bombay High Court allowed the applications filed in

the election petition by the Chief Election Commissioner, Returning Officer and the Superintendent of Police to be deleted from the array of parties, they being not the necessary parties. In the case of B. Sundra Rami Reddy (supra), the Hon'ble Supreme Court upheld the order passed by the Hon'ble Andhra Pradesh High Court holding that the Election Commissioner of India was not a necessary party to the election petition and deletion of Election Commission was held proper. Shrilal Janva's case (supra) brings out the ratio that the Returning Officer is not a necessary party even if allegations are made against him. There is no quarrel with the proposition that the Returning Officer and the Election Officer are not the necessary parties or the proper parties. But fundamentally the question is as to whether having regard to the scheme of the Act and the Rules they are liable to be deleted at the instance of the returned candidate and whether their joinder is fatal? The decision as referred hereinabove relied upon by the learned counsel for the petitioner do not lead to the ratio that for such joinder alone the petition is required to be rejected. On the contrary, in the case of Ram Shanker (1978 JLJ 401) relied upon by the learned counsel for the petitioner it has been held that where all the necessary parties have been joined, the circumstance that a person who is not a necessary party has also been impleaded does not

lead to the breach of mandatory provisions of Section 82 of the Representation of the People Act and there would be no question of dismissing the petition.

So far the decision of the Hon'ble Karnataka High Court in B.S. Yadiyurappa (supra) as relied upon by the learned counsel for the petitioner is concerned, it has of course been held by the Hon'ble Karnataka High Court in the said decision that under the mandate of Section 86 of the Act of 1951, for the breach of the requirements of Section 80 and Section 82, the petition is required to be dismissed; and for the impleadment of Returning Officer or of the District Election Officer as parties, the petition has been held running counter to the scheme of the provisions of the Act and impleadment of such persons has been held to be in breach of provisions of Section 82 and for that purpose, the ratio in Jyoti Basu's case has been relied upon and it has been held that when there is breach or violation of Section 82 then it means that there is no option to the High Court either to allow deletion or striking out the name of the party or impleadment of a party which ought to have been impleaded. It has been observed that whether it is a case of non-joinder of necessary party or of misjoinder of a party that ought not to have been impleaded, recourse cannot be had either to Order 1 Rule 9 or Order 1 Rule 10 CPC or to inherent powers in the election law. With respect,

this Court is unable to agree to the sweeping proposition as laid down by the Hon'ble Karnataka High Court as the same stands contrary to the decisions of the Hon'ble Supreme Court. The Hon'ble Karnataka High Court in the said decision in B.S. Yadiyurappa has proceeded to distinguish Constitution Bench decision of the Hon'ble Supreme Court in Murarka Radhey Shyam with the observations that the said decision is confined to its facts and does not lay down that any person who is not or has not been a candidate in the election concerned could be impleaded or could be allowed to be impleaded as a respondent. In Murarka Radhe Shyam (supra), the Hon'ble Supreme Court has held:-

“We agree with the High Court that if all the necessary parties have been joined to the election petition, the circumstance that a person who is not a necessary party has also been impleaded does not amount to a breach of the provisions of S. 82 and no question of dismissing the petition under sub-s. (3) of S. 90 arises. It is open to the Election Tribunal to strike out the name of the party who is not a necessary party within the meaning of S. 82 of the Act. The position will be different if a person who is required to be joined as a necessary party under S. 82 is not impleaded as a party to the petition.”

Even in the case of Jyoti Basu, as referred by the Hon'ble Karnataka High Court in B.S. Yadiyurappa; and in other decisions, the course has been adopted of directing

striking out the names of parties joined unnecessarily and not of dismissal of the petition as such. The submission that the petition is liable to be rejected for mis-joinder of parties, i.e. joinder of unnecessary parties, is, therefore, liable to be rejected. Even if it is a case of unnecessary joinder of the Returning Officer and the Election Officer, when other necessary parties are there on record, such joinder by itself is not fatal to the election petition.

The parties aforesaid could have been ordered to be deleted but the learned trial court has chosen not to do so. The question then is as to whether the order passed by the learned Tribunal calls for interference under Article 227 of the Constitution of India? This Court is clearly of opinion that it does not. The significant fact remains that this prayer for striking out of the names of non-applicant Nos. 2 and 3 has not come up from the said non-applicants but it is the returned candidate who has moved two separate applications for the purpose. Such a request by the present petitioner, respondent to the election petition, cannot be countenanced.

Moreover, it is to be imbibed that the jurisdiction under Article 227 is permitted to be invoked in the cases where the impugned order discloses any error apparent on the face of the record and leads to manifest failure of justice. The order impugned in the present case, neither suffers from any

error apparent on the face of record nor leads to manifest failure of justice. The attempt on the part of the learned counsel for the petitioner to raise hyper-technical questions of interpretations of the Rules at this stage of the election petition cannot be countenanced. An error which is sought to be suggested by way of long drawn process of arguments could least be said to be an error apparent on the face of the record and in the name of challenge to every interlocutory order passed by the trial court, the progress of the matter before the trial court cannot be permitted to be arrested. Having regard to the subject matter of these petitions and the order passed by the learned court on 3rd February 2006, this Court is of opinion that further dilatation on the questions sought to be raised by the petitioner is not requisite herein.

In the overall facts and circumstances of the case, this Court is satisfied that the impugned order rejecting the applications submitted by the petitioner does not lead to manifest failure of justice and in that view of the matter, the present one is not a fit case for interference under Article 227 of the Constitution of India.

Both the writ petitions remain bereft of substance and are, therefore, rejected. There shall be no order as to costs.

(DINESH MAHESHWARI), J.